New Jersey Bell Telephone Company *and* Communication Workers of America, Local 1023, AFL-CIO. Case 22-CA-10514

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On May 14, 1982, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, the counsel for the General Counsel and Respondent filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, only to the extent consistent herewith.

In his Decision, the Administrative Law Judge found that Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to turn over to the Union certain attendance and tardiness information concerning three employees who had filed grievances until such time as the Union obtained the written consent of said employees for release of the requested information. For the reasons set forth below we find that Respondent's failure and refusal to supply the requested information violated Section 8(a)(5) and (1) of the Act.

The record reveals that on December 3, 1980, three employees, Kunz, Halbert, and Scott, were late for a meeting called by Respondent's manager, Kelly, at the beginning of the work shift. The tardiness of the three was noted in their personnel records. As fully set forth by the Administrative Law Judge, the Union began to investigate the possibility of filing a grievance on behalf of the three employees in an effort to have the tardiness notations removed from their records.

While pursuing this course, the Union requested that Respondent supply it with the absence and tardiness records of the three employees. Respondent informed the Union that the records contained confidential information protected by Respondent's employee privacy protection plan and that the information would be released to the Union only upon Respondent's receipt of a written release from the employees whose records were sought.

It appears that the employees had no objection to the release of their records but, pursuant to the Union's instruction, they did not execute a written release. Without the releases, Respondent consistently refused to supply the records. The Union subsequently filed a grievance which was settled at the second step.

The actual absence and tardiness records of the three employees in question were not placed in evidence. Instead, the record contains what purport to be representative samples of employee records maintained by Respondent. Each employee record is comprised of two parts. The first part is simply a calendar denoting absences and tardies. The second portion contains a written notation of the excuse or reason presented by the employee for each time he or she was late or absent.

Based on the foregoing, the Administrative Law Judge concluded that Respondent did not violate the Act by insisting that the employees in question sign written releases before it would turn over the requested information to the Union. In so concluding, he first determined that the portion of the requested records that set forth the reasons provided by the employees for their tardiness or absences contained material that reflected upon the employees' physical and mental condition and, therefore, the records possessed a "legitimate aura of confidentiality." He further found that Respondent was legitimately concerned about protecting the confidentiality of its employees and that Respondent's good faith was demonstrated by its willingness to release the information upon receipt of the releases. Finally, he found that the Union "intentionally placed itself in the way of attaining its own legitimate objective" inasmuch as the employees in question were willing to sign the releases but failed to do so at the express instruction of the Union. In his view, the Union chose to "play games" rather than seek to obtain information in a manner that preserved the legitimate interest in maintaining employee confidentiality on sensitive matters. For the reasons set forth below, we find that the Administrative Law Judge erred.

Our analysis begins with the fact that the information requested by the Union is plainly relevant and necessary for the Union's performance of its statutory bargaining obligations. The information was requested in the context of a possible grievance over the tardiness notations in the records of three bargaining unit employees. Quite plainly, the tardiness and absence records of the employees in question would be important and relevant facts in any possible grievance action. In short, looking only to the relevance and importance of the information from the Union's standpoint, it plainly would be entitled to the information.[1]

[1] See *Canal Electric Company*, 245 NLRB 1090, 1093 (1979).

A determination of relevance, however, does not end the inquiry. This is particularly true in cases where the information sought has a "legitimate aura of confidentiality"[2] because of its private and sensitive nature. In those cases, the Board must determine whether the private and sensitive nature of the information outweighs the Union's need for the information.[3]

In the cases principally relied upon by the Administrative Law Judge, it was determined that because of the particular nature of the information requested the employees' interest in confidentiality outweighed the Union's need for the information. In *Detroit Edison*, the Union sought aptitude test scores derived by an independent testing service which were kept totally confidential within the management hierarchy of the employer. In *Johns-Manville*, the information consisted of actual medical reports compiled by physicians after their examination and diagnosis of the employee patients. Thus, in each case, the records reflected professional diagnosis and evaluations of the mental and physical characteristics.

In contrast, the records sought here are in no legitimate sense of the term medical records. Instead, Respondent's records merely reflect the reasons provided by the employees themselves for their tardiness or absence. The information was freely provided by each employee to a management person or any other employee that might have received their call. The information, in no way, reflects the type of confidential, professional evaluations found in *Detroit Edison* or *Johns-Manville*. Accordingly, we find that the type of information sought here simply is not of the same nature as that entitled to the cloak of confidentiality in *Detroit Edison* or *Johns-Manville*.

With respect to the Administrative Law Judge's view that the Union thwarted its own efforts and chose to "play games," we have found that the Union had a right to the information without obtaining releases. It is irrelevant that, in the instant case, the obtaining of releases might have been relatively simple, for it is the principle here which is important. Thus, it was certainly not "gamesmanship" for the Union simply to insist upon receiving information it was entitled to receive under the Act.

Based on the foregoing, we conclude that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to turn over to the Union the information relating to the tardiness and absence records of employees Kunz, Halbert, and Scott. We shall order the appropriate remedy.

[2] *Johns-Manville Sales Corporation*, 252 NLRB 368 (1980).

[3] See, generally, *Detroit Edison Co.* v. *N.L.R.B.*, 440 U.S. 301 (1979).

CONCLUSIONS OF LAW

1. The Respondent, New Jersey Bell Telephone Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Communication Workers of America, Local 1023, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing since on or about December 9, 1980, to furnish the Union with the absence and tardiness records of employees Kunz, Halbert, and Scott until such time as said employees signed a written release, Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, New Jersey Bell Telephone Company, South River, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Communication Workers of America, Local 1023, AFL-CIO (the Union) by failing and refusing to supply the Union with the absence and tardiness records of employees Kunz, Halbert, and Scott until such time as said employees sign written releases.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Furnish the Union with copies of the absence and tardiness records of employees Kunz, Halbert, and Scott.

(b) Post at its South River, New Jersey, facility copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively with Communication Workers of America, Local 1023, AFL-CIO, by refusing to furnish information to which the Union is entitled under the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

WE WILL furnish to the Union copies of the absence and tardiness records of employees Kunz, Halbert, and Scott.

NEW JERSEY BELL TELEPHONE COMPANY

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This proceeding was heard before me on September 8, 1981, in Newark, New Jersey. The charge was filed on December 18, 1980, and amended on January 20, 1981, by Communication Workers of America, Local 1023, AFL-CIO, hereinafter called the Local.[1] The complaint issued on January 28, 1981, alleging that New Jersey Bell Telephone Company, hereinafter called Respondent or the Company, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by refusing to furnish to the Local certain tardiness and absenteeism records necessary for it to fulfill its function as the exclusive bargaining representative of Respondent's employees. Respondent, in its answer, denied the commission of any unfair labor practices.

All parties appeared at the hearing and were afforded full opportunity to be heard and present evidence and argument. The General Counsel and Respondent filed briefs. Upon the entire record, my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New Jersey corporation, maintains its principal office and place of business in Newark and other places of business throughout the State of New Jersey, including South River, where it has, at all material times, been continuously engaged in the business of furnishing telephone communications services.

In the course and conduct of Respondent's business operations during the 12-month period immediately preceding issuance of the complaint, Respondent received gross revenues valued in excess of $500,000. During the same period, Respondent shipped and transported products valued in excess of $50,000 from its place of business in interstate commerce directly to States of the United States other than the State of New Jersey, and received goods valued in excess of $50,000 which were transported to its places of business in New Jersey, in interstate commerce, directly from States of the United States other than the State of New Jersey. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Local and the International[2] are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent and the International have been and are now parties to a collective-bargaining agreement covering employees of Respondent in an appropriate unit. The most recent contract covers the period August 10, 1980, through August 6, 1983, and was signed by two officers of the International and one officer from each of the three locals covered by the contract. Anne Princiotta, president of Local 1023, participated in the collective bargaining for the contract[3] and signed as such as one of the five authorized representatives of the International as well as representative of the Local.

According to the uncontroverted and credited testimony of Princiotta, who has held the office of president of the Local for 17 years, grievances have historically been

[1] Communication Workers of America, the Local's parent, will hereinafter be called the International.

[2] The General Counsel moved to amend par. 8 of the complaint to allege the International as the party to the contract, rather than the Local. Ruling on the motion was deferred at the request of Respondent's counsel. On October 14 Respondent's counsel advised that he had no objection to the amendment. On October 20 the motion was granted.

[3] Princiotta was authorized to participate in negotiations by Glen Watts, the International president, and was instructed to do so in conjunction with the International representative who was primarily in charge of the bargaining.

handled under the contract between Respondent and the International on behalf of the 1,600 employees in the commercial and marketing departments by representatives of the Local. The first step of the grievance under article 12 of the contract is handled by the steward in the office or work location where the grievance has arisen. Each office or work location has its own elected steward. He deals with the supervisor or office manager at that location. The second step of the grievance procedure is also handled by the Local, with either the office steward and chief steward[4] or an executive officer of the Local participating. They deal on the division manager level. It is not until the third step of the grievance procedure that an International representative is brought in for further processing of the grievance.

Princiotta testified further that not only has she worked at the second grievance step with the stewards and chief steward but, as president of the Local, has trained stewards. Contrary to the position taken by Respondent with regard to the authority of the Local to process grievances, Princiotta testified that she has never been advised that the Local's office stewards were not to represent the International in the processing of grievances at the first step.

Daniel Di Giorgin, an employee of Respondent and office steward,[5] along with Debbie Holsten at the South River Resident's Service Center, also testified with regard to the practice of grievance handling, particularly at that location. His testimony, like that of Princiotta, was uncontradicted and is credited. As steward at South River, Di Giorgio represents all nonmanagement employees at that location, and as such has been assigned the duty, among others, of initiating the processing of grievances at the first level. This occurs on the average of somewhat less than once per month. He is also generally present at second stage grievance meetings. Both stewards, Di Giorgio and Holsten, report directly in the chain of command to Chief Steward Gerald Gochal who in turn reports to Princiotta.

Contrary to the position taken by Respondent with regard to the authority of the Local to process grievances, Di Giorgio testified that Respondent never required that a representative of the International be present at the first step of the grievance procedure. Indeed, Di Giorgio testified that representatives of the International were never present at either the first or second step grievance meetings which he attended. Similarly, he has never been told by any member of management that he should not represent employees during the processing of grievances.[6]

Article 5 of the applicable collective-bargaining agreement provides that bulletin boards be maintained for the use of "the Union." Such bulletin boards are located at all of the Local's locations. The one at the South River location is monitored by the Local's office stewards, Di Giorgio and Holsten. No one from management, according to Di Giorgio, ever told him not to monitor the bulletin board. The other bulletin boards are similarly monitored by the Local's stewards at those locations.

B. *The Alleged Unfair Labor Practices*

During the week of December 3, 1980,[7] the manager of Respondent's South River office, Joan Kelly, called for a special meeting of certain employees to discuss mandatory overtime, to take place on that date prior to the normal starting time. Three employees, Kunz, Halbert, and Scott, were late for the meeting and their tardiness was noted in their personnel records. When Holsten was advised that entries had been made in the personnel records of the three employees she contacted Di Giorgio, informed him of the fact and registered her concern. She discussed with him the possibility of filing a grievance based on the request of one of the employees. The two decided that if they found a reasonable basis for filing a grievance they would do so and would, in the meantime, pursue the matter through further investigation.

After the discussion between Holsten and Di Giorgio, the latter contacted the three tardy employees and discussed with them, in general, their previous records with regard to tardiness. Each informed him that she thought her record, insofar as tardiness was concerned, was satisfactory.

In possible pursuance of a grievance on behalf of the three employees to get the tardiness entries removed from their personnel files, Holsten and Di Giorgio, on December 9, approached Kelly on the subject of her making their absence and tardiness records available.[8] Kelly, citing Respondent's Employee Privacy Protection Plan, denied them access to the records unless they first obtained a signed release form from the employees involved. Di Giorgio and Holsten stated that the Union was entitled to see the records without first obtaining releases. Kelly refused their request and they left.

Following Kelly's refusal to make the requested records available, Di Giorgio discussed with the three involved employees the refusal and Kelly's requirement that the three employees first sign releases as per Respondent's Employee Privacy Protection Plan[9] (EPPP). Di Giorgio advised the three employees to refuse to sign the release forms, apparently in order to test his position that a union need not seek the permission of employees before gaining access to absence and tardiness records where the possible filing of a grievance is contemplated. Subsequently, Kelly contacted the three employees con-

[4] The office steward reports to the chief steward who is also a member of the Local's executive board.

[5] Di Giorgio has been steward since April 1980.

[6] Di Giorgio does not hold an office in the International and receives expense money for participating in labor relations matters only from the Local. Any actions he takes in this area is strictly on behalf of the Local.

[7] Hereinafter all dates are in 1980, unless otherwise indicated.

[8] Although at one point in his testimony, Di Giorgio stated: "We asked for—we asked to see, on paper, if in fact, on that day [December 3] those three particular individuals were marked tardy." Elsewhere, Di Giorgio testified to having asked for all of the absence and tardiness records of the three employees and if the reasons for the absences and incidents of tardiness had been included in the records, Di Giorgio expected to be given those records as well. With regard to this apparent inconsistency, I find that the request was a broad one and not limited to seeing the December 3 entry alone. Admittedly, Di Giorgio did not differentiate in his request between merely seeing the record of numbers of absences and incidents of tardiness and seeing the reasons noted for each.

[9] The EPPP was implemented in January 1980 and copies were distributed among employees in the South River office in April.

cerning their signing a release and, in accordance with Di Giorgio's advice, they refused to sign the releases. Still later that day, Di Giorgio met once again with Kelly to renew his request for the records. Kelly refused Di Giorgio's request and stated that she would not release the records without a signed release. The records were never furnished.

Following Respondent's refusal to furnish the records, a grievance was filed. The grievance was resolved at the second step, the parties agreeing that if the three employees involved maintained good records for 6 months, the notations regarding the December 3 tardiness would be removed from their files. Subsequently, the employees maintained good records and consequently the notations were removed.

Analysis and Conclusion

Analysis of the case law on the subject prior to the Supreme Court's decision in *Detroit Edison Company* v. *N.L.R.B.*,[10] indicates that where a collective-bargaining representative requested an employer to furnish absentee (and tardiness) records in connection with the possible processing of a grievance the bargaining agent was entitled to that information, employer was in violation of the Act if the request was refused.[11] *Detroit Edison* and subsequent Board decisions have markedly affected the earlier line of cases.

In the instant case Respondent does not deny that it refused the Local's request for the tardiness and absentee records of the three employees who were tardy on December 3. On the contrary, Respondent admits that it refused the Local access to these records but asserts several affirmative reasons why it could lawfully do so, chief among which I find its reliance on the impact of *Detroit Edison* most convincing. Inasmuch as I find merit in this affirmative defense, it will serve little purpose to discuss the others.[12]

With regard to its reliance on *Detroit Edison*, Respondent asserts that the Supreme Court in that case, "severly limited the duty to furnish information" by holding that where the private nature of the information requested outweighs the Union's interest in the information, there is no duty on the part of the company to furnish such information.

In dealing with this defense, I note first that the information sought by the Union in the instant case is not confidential in the same sense as was the information sought in *Detroit Edison*. In *Canal Electric Company*,[13] the Union demanded absentee records of employees in the unit in order to process grievances. The respondent in that case relied, in part, on *Detroit Edison* contending that the absentee records were confidential or private. The Administrative Law Judge rejected the respondent's contention factually finding that, "The record discloses only one reason given the Union for the refusals, confidentiality (or private)." The Administrative Law Judge concluded, "Respondent does not contend that the information requested itself contains any confidential information" but that if the information were leaked, it could subject employees to ridicule. The Administrative Law Judge noted that inasmuch as the information sought was not itself confidential, the case was distinguishable from *Detroit Edison*. The Board in affirming the rulings, findings, and conclusions of the Administrative Law Judge and adopting his Order did not comment on the distinction made between *Canal Electric Company* and *Detroit Edison* by the Administrative Law Judge.

In *Johns-Manville Sales Corporation*,[14] the union demanded the names of 34 employees which the company's doctors had found had pneumoconiosis. The union legitimately required the information in order to develop a health program for employees and to prepare contract proposals. The company refused to release the information to the union on grounds that the identity of the employees afflicted with the disease constituted confidential medical records, citing *Detroit Edison.*

In his analysis the Administrative Law Judge explicitely distinguished *Detroit Edison* by pointing out that in that case the desired information was kept out of the hands of both management personnel and employee representatives by the company's psychologists, thus maintaining confidentiality. This situation differed from that in *Johns-Manville* where the desired information had been made available to members of the supervisory hierarchy, thus destroying, in part, the confidential nature of the data. Based on the lack of confidentiality, among other considerations, the Administrative Law Judge found a violation of Section 8(a)(5) and recommended that the company be ordered to furnish the requested information.

The Board, on review, specifically dealt with the question of confidentiality and noted:

> The weight of the Respondent's assertion of confidentiality is also, of course, subject to scrutiny. . . . [i]t is arguable that the Respondent itself has not treated the employees' identities in a strictly confidential manner since it has revealed them to various persons in the supervisory hierarchy.

Thus, the Board conceded that there was indeed a difference between the confidentiality practiced by the respondent in *Detroit Edison* and that claimed by Respondent to exist in *Johns-Manville*. Nevertheless, it found no violation in *Johns-Manville* even though the information requested was not as completely confidential as in *Detroit Edison*. The Board explained that despite this lack of total confidentiality:

> Nevertheless, there exists a legitimate aura of confidentiality in the identities of those individuals who have been identified as having a certain medical disorder. The privilege in question, of course, belongs

[10] 440 U.S. 301 (1979).

[11] *Markle Manufacturing Company of San Antonio*, 239 NLRB 1353 (1979).

[12] One such defense, namely that Respondent had no duty to bargain with Local 1023 is clearly without merit since it had been dealing with that entity for many years at the first and second levels of the grievance procedure. To deny, at this time, that the Local does not represent the employees borders on the frivolous.

[13] 245 NLRB 1090 (1979).

[14] 252 NLRB 368 (1980).

> to the employees and not to the Respondent. [252 NRLB at 368.]

The Board, by this statement appears to acknowledge the right of employees to a certain degree of privacy with regard to their medical records and that this right of privacy is one consideration which must be weighed along with other factors in deciding, on a case-by-case basis, whether information regarding them must be made available to the union. The amount of confidentiality afforded the information by the company no longer appears to be controlling, if indeed it was ever meant to be. Rather, the employees' right to privacy with regard to their medical records is given greater consideration than previously.

The Board, in its effort to balance the right to privacy of employees with the right to information of the union, took into consideration the good faith of the employer as reflected by its willingness to divulge the privileged information to the union upon receiving the consent of the involved employees. To this effect the Board (252 NLRB at 368) stated:

> We note that the Respondent has demonstrated that its refusal to disclose sensitive information privileged to those employees was made in good faith, since it sought to accommodate the Union by submitting forms to a number of red-tagged [individuals identified as being partially disabled by pneumoconiosis] employees on which they indicated whether or not they wished to be identified to the Union as having pneumoconiosis, and has turned over to the Union the names of those who consented.

The Board concluded in the *Johns-Manville* case (at 368):

> We find, therefore, contrary to the Administrative Law Judge, that, on balance, and in the particular circumstances present, the Respondent has not violated Section 8(a)(5) by refusing to furnish the Union with the identities of the red-tagged employees.

The facts in the instant case bear certain similarities to those in *Johns-Manville*. Here, as there, the information requested involves, in part, material which reflects upon the medical condition,[15] physical and mental, of certain employees. It thus has about it, in the words of the Board, a "legitimate aura of confidentiality" which is privileged and which privilege "belongs to the employees and not to the Respondent." Similarly, in the instant case as in *Johns-Manville*, I note here, as the Board did there, that Respondent has demonstrated that its refusal to disclose sensitive information privileged to those employees was made in good faith, since it sought to accommodate the Union by agreeing to release the requested information upon obtaining the consent of the employees whose records were requested.

In the instant case the Union did not, however, avail itself of the opportunity offered by Respondent, but, on the contrary, explicitly directed the three employees to refuse to give their consent to the release of the information, in order, apparently to make a test case, to obtain a ruling that the Union is entitled to see such records without the consent of the employees involved. However, if the Board has said that in certain cases it is evidence of good faith for an employer to agree to offer such information to the union only after first obtaining the consent of the employees involved, it would clearly be contrary to the Board's intention to find that a union under no circumstances should have to first obtain the consent of employees involved before receiving privileged or confidential information. Each case must be considered on its own so that an across-the-board type of ruling involving the necessity of obtaining consent would clearly be inappropriate.

Although I can easily conceive of a situation where it would not be appropriate for a union to first be required to obtain the consent of employees before being given confidential information regarding employees,[16] the instant case is not one of them. Here, the Union's object in seeking to obtain access to the records containing the confidential material was to determine if based on certain contents of the files it should pursue the grievance procedure on behalf of the three employees who were tardy. The Union did not limit its request to a portion of the records but asked for the entire files, including the confidential material. When told to first obtain the consent of the three employees, it refused to do so but, on the contrary, told the involved employees not to sign releases. The Union thus intentionally placed itself in the way of attaining its own legitimate objective for there is no evidence in the record that the employees had any real objections to the union representative gaining access to the material in question and it would have been a simple matter for the Union to obtain releases to gain access to the materials it needed and to pursue the grievance procedure to a proper conclusion. Instead, it preferred to play games, to challenge the Employer's Employee Privacy Protection Plan, a policy which, on its face, appears to be legitimately concerned with employees' rights to privacy and not in any way discriminatorily motivated.

I find that in the instant case, with the specific facts narrowly construed, Respondent did not engage in conduct violative of the Act when it required the Union to first obtain the consent of the employees involved before releasing confidential information from their files. I recommend dismissal of the complaint in its entirety.

[15] Certain absentee/tardiness records of the type at issue herein were offered and received into evidence. An analysis of these records indicate that they do, in fact, contain information concerning which employees might well be sensitive.

[16] For example, a case involving suspected discriminatory disparate treatment of employees where the favored employees refuse to consent to the release of their records for comparison with those of alleged discriminatees, an analysis of the records is critical to the investigation of the matter.

CONCLUSIONS OF LAW

1. The International and the Local are labor organizations within the meaning of Section 2(5) of the Act.

2. Respondent is an employer within the meaning of Section 2(2), and is engaged in commerce as defined in Section 2(6) and (7), of the Act.

3. Respondent has not committed any of the unfair labor practices alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]